

**UNITED STATES DISTRICT COURT  
Western District of Massachusetts**

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KEITH BRIAN ASKINS	)	
	)	
Plaintiff	)	Civil Action No.: 04-30178-KPN
	)	
V.	)	DEFENDANT WILLIAM C. WERNICKI
	)	TRUCKING'S PROPOSED JURY
WILLIAM C. WERNICKI TRUCKING	)	INSTRUCTIONS
	)	
Defendant	)	
	)	

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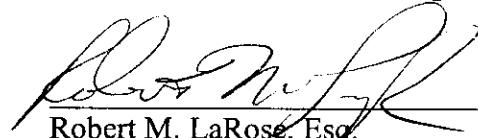
**PRE-EXISTING INJURY OR CONDITION**

A defendant is only responsible for the additional increment of suffering caused by the defendant's negligence. The plaintiff may not recover for pain or impairment that he would have experienced even if the accident never occurred. The plaintiff of course has the burden of proof on the extent or increment of suffering incurred by him.

In this case you heard testimony about Mr. Askin's previous injuries to his right knee, previous surgeries and treatments. You also heard from Mr. Daniel Pisano and Mr. Michael Aiello about their observations of the plaintiff both before and after the incident. If you find that the plaintiff's previous injuries and conditions are separable from the injuries allegedly received in this incident, then you cannot award damages for pain and suffering or impairment that the plaintiff would have experienced even if the incident never occurred. McKeown v. Woodshole,

9 F. Supp. 2d 32, 47 (D. Mass., 1998); Stevens v. Bangor and Aroostook, R. Co., 97 F. 3d 594, 601 (1<sup>st</sup> Cir. 1996).

ATTORNEY FOR THE DEFENDANT,  
William C. Wernicki Trucking



Robert M. LaRose, Esq.

Russo & LaRose

95 Glastonbury Boulevard, Ste. 400

Glastonbury, CT 06033

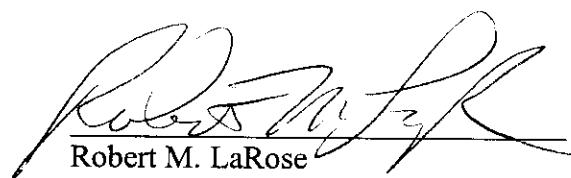
(860) 368-5070

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**CERTIFICATE OF SERVICE**

I, Robert M. LaRose, Esq., do hereby certify that a copy of this Proposed Jury Instructions has been hand delivered to the following counsel of record on March 21, 2006, as follows:

Barry E. O'Connor, Esq  
293 Bridge Street, Suite 326  
Springfield, MA 11103



Robert M. LaRose